

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:15-CR-00302-RJC-DSC

USA

v.

ANTHONY LEON BOST, ET AL.

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ORDER

THIS MATTER comes before the Court on the pro se motion of Kathy J. Austin (Petitioner), (Doc. No. 126), seeking the return of a firearm and the Government's Motion to Strike, (Doc. No. 167), pursuant to Fed. R. Crim. P. 32.2(c)(1)(A) and 21 U.S.C. § 853(n)(3).

A person asserting a legal interest in property forfeited to the United States in a criminal case may petition for a hearing to determine the validity of the alleged interest within thirty days of receiving notice of forfeiture. 21 U.S.C. § 853(n)(2). Such petition must be signed under penalty of perjury and state the nature and extent of the property interest; the time and circumstances of the acquisition of the interest; and any additional facts supporting the claim. 21 U.S.C. § 853(n)(3). A claimant is required to adhere strictly to these filing requirements to establish standing to litigate an alleged interest in forfeited property. United States v. Loria, 2009 WL 3103771, *2 (W.D.N.C. Sept. 21, 2009) (dismissing untimely and unsworn petition; collecting cases). On motion, a court may dismiss a petition for lack of standing, taking the facts in the petition as true. Fed. R. Crim. P. 32.2(c)(1)(A).

Here, the Court entered an Order and Judgment of Forfeiture on July 28, 2016, regarding a Smith & Wesson, Model 59, 9 mm pistol and ammunition the defendant used to commit a robbery. (Doc. No. 108). On October 20, 2016, Petitioner filed a pleading stating she is the widow and sole survivor of Michael Chapman Austin and requesting that the pistol and

ammunition be returned to her. (Doc. No. 126). The Government moves the Court to strike the petition because it fails to state the required details about her interest in the firearm, such as when it was acquired, and because the petition was not signed under penalty of perjury. (Doc. No. 167: Motion at 2). Petitioner has not responded to the government's motion or moved to amend her petition to meet the statutory requirements. Accordingly, the Court finds she does not have standing to pursue her claim.

IT IS, THEREFORE, ORDERED that the government's Motion to Strike, (Doc. No. 167), is **GRANTED** and Petitioner's motion, (Doc. No. 126), is **STRICKEN**.

The Clerk is directed to certify copies of this order to the United States Attorney and Kathy J. Austin, 3771 Hebron Rd., Galax, Virginia, 24333.

Signed: September 22, 2017

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

